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MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM: Harry E. Fitzwater
Chairman, Information Review Committee

SUBJECT: Your Appearance Before the SSCI on the Freedom
of Information Act

1. This memorandum is for your background in preparation for your appearance before the SSCI on 21 July related to Freedom of Information Act (FOIA) relief for the Agency.

2. It has come to our attention that during your appearance Senator Moynihan may ask you to explain why the Agency refuses to declassify and release a document describing the nuclear capabilities of a number of countries. This document, an NIO memorandum entitled Prospects for Further Proliferation of Nuclear Weapons (Attached at Tab A) was inadvertently released, partially sanitized, in 1978 as a result of an FOIA request forwarded to the Agency by the Energy Research and Development Agency (ERDA).

3. The document contained very sensitive intelligence and should never have been released. The Agency learned of the mistake as a result of a press enquiry shortly after its release and ^{therefore} has since refused to further release the document denying several FOIA requests. ~~therefore~~ One of the requests was from

the Center for National Security Studies (Morton Halperin's organization) and it seems reasonably clear that this denial will be litigated in the near future.

4. The rationale on which the Agency has relied to deny these requests is the principle that inadvertent or mistaken release of classified information does not constitute declassification per se and thus is not a bar to further protection of the information. We have established and maintained this principle in spite of a provision in Section 1-607, Executive Order 12065 which states that "Classification may not be restored to documents already declassified and released to the public under this order or prior orders." Our position is that this section refers to intentional declassification and release not inadvertent or mistaken release. Another argument used by some to support this position is that the above section refers to releases under the Executive Order system and not to releases under the FOIA.

5. The problem is compounded by the fact that the document, as released, has received widespread public dissemination by both the original requester and the Carrollton Press, a document distribution service, and ^{it} may be located in as many as 150 libraries around the country. It has also been referred to on

As you are well aware,
numerous occasions by the media. ~~In addition,~~ the existence of the document and some of the intelligence contained therein has been revealed in public by Carl Duckett. ~~[the former Deputy Director of Science and Technology.]~~

6. As a result of Senator Moynihan's concern, and disagreement at the working level in the Agency as to whether the Agency should continue to abide by the above mentioned principle, I convened the Information Review Committee (IRC) on 15 July, *The purpose of this meeting was* to re-examine the Committee's previous decision establishing the above principle as well as the question of whether at this point we should declassify the NIO memorandum and release it given its widespread public dissemination. The IRC decided to revalidate the principle and to continue to maintain the classification of the document and thus continue to refuse its release. These decisions were made with the full support of the General Counsel.

7. The logic behind the above decisions is:

A. The Principle:

- (1) The abrogation of the principle would prevent the Agency in the future from trying to repair human error even though a document may be mistakenly

released to only one person.

- (2) There is some judicial precedent for this principle although not in an FOIA related case.

B. Maintain Classification *of the WIO Memorandum:*

- (1) Declassification would cause further dissemination of information concerning sensitive intelligence sources and methods and objectives *which we have an obligation to protect.*
- (2) Official release would cause damage to relations between the U.S. and the foreign countries mentioned in the report.
- (3) Declassification at this time would weaken our support for the above mentioned principle.
- (4) Failure to try to limit the damage further would be perceived by those who cooperate with us as an additional example of our lack of resolve to protect sensitive information.

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8. [] is meeting with Jack Blake, Staff Director of the SSCI on Friday 17 July and will ^{determine} see if anything can be done to convince Senator Moynihan not to ask about this matter ^{in open hearings}. You may wish to consider whether you should call the Senator personally and try to satisfy him thus avoiding public debate on the matter. *We are certain that there will be a flood of*

9. I am available to discuss this matter at your convenience if you deem it necessary. I am attaching at Tab B additional background, including a chronology of the events.

Harry E. Fitzwater

Attachments:

- A. Nuclear Proliferation Document
- B. Chronology of Events

FOIA requests for the document if it is openly discussed.